



WILLIAM YOUNGER GUESS
1144 PARLANGE
BATON ROUGE LA 70806

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OFFICE OF PETITIONS

In re Application of
William Younger Guess
Application No. 09/964,000
Filed: September 26, 2001
Title of Invention: **COAXIALLY COMBINED
MEAT ROAST WITH STEAKS OR CHOPS
CUT FROM SAME**

ON PETITION

This is a decision on the petition filed February 2, 2007 to withdraw the holding of abandonment, which is treated under 37 CFR 1.181.

The petition to withdraw the holding of abandonment is **DISMISSED**.

The application was held abandoned on November 15, 2005, for failure to file a timely response to the Notice of Non-Compliant Appeal Brief mailed, October 13, 2005. The Notice set a one month or 30 day period for reply. A response filed October 21, 2006 was followed up by a second Notice of Non-Compliant Appeal Brief mailed March 29, 2006. That Notice reminded petitioner that the period for reply remained as set forth in the October 13, 2005 Notice. Accordingly, a Notice of Abandonment was mailed on May 19, 2006.

Petitioner asserts that the communication filed October 21, 2005 was an explanation and recitation of the rule, and that the Examiner of record incorrectly interpreted it as an argument. Nonetheless, petitioner filed an appeal brief on May 5, 2006.

Petitioners argue that the application was held abandoned due to procedural impropriety on the part of the Examiner.

To the contrary, this application is abandoned because petitioner did not follow the proper course of action which would have been to file a proper response to the Notice of Non-Compliant Appeal Brief with the proper extensions of time, not the Examiner's interpretation of the communication filed July 28, 2005.

The Appeal Brief filed May 5, 2006 was filed after the abandonment of the application. Applicants are not afforded an opportunity to withhold a proper response to an office communication even if they think the office communication is in error. In view thereof, the holding of abandonment will not be withdrawn.

Petitioner may wish to file a petition to revive under 37 CFR 1.137(a) or (b). Section 1.137(b) now provides that where the delay in reply was unintentional, a petition may be

filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof;
- (2) the petition fee as set forth in 37 CFR 1.17(m) (\$675.00);
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and
- (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

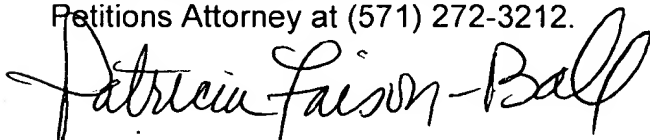
The filing of a petition under the unintentional standard cannot be intentionally delayed and therefore should be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (571) 273-8300

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.



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